SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 283

THE UNITED STATES, PETITIONER

vs.

MAGNOLIA PETROLEUM COMPANY, E. R. BROWN, R. WAVERLY SMITH, ET AL., ETC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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(A) Supreme Court of the United States

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THE UNITED STATES, PETITIONER

v.

MAGNOLIA PETROLEUM COMPANY, A JOINT STOCK ASSOCIATION, E. R. BROWN, R. WAVERLY SMITH, E. E. PLUMLY, W. C. PROCTOR, COURTENAY MARSHALL, F. V. FAULKNER, A. C. ERIE, D. C. STEWART, B. H. STEPHENS, AND W. H. FRANCIS, TRUSTEES

Petition for writ of certiorari to the United States Court of Claims

The Solicitor General, on behalf of the United States of America, prays that a writ of certiorari issue to review the judgment of the United States Court of Claims entered in the above-entitled cause February 14, 1927. On February 25, 1927, the defendant filed a motion for a new trial which, on March 7, 1927, was overruled by the court.

(B) STATEMENT

This case presents questions relating to the basis for calculating interest on refunds of income and excess profits taxes for 1916 and 1917, the principal one being as to the date from which interest should be computed. The refunds were allowed October 11, 1923, and the principal amounts thereof paid November 22, 1923. On those dates the revenue act of 1921 (c. 136, 42 Stat. 227) was in force. The Commissioner of Internal Revenue deferred the calculation of interest to a later date, and the amount of interest payable on the refunds was finally determined by him and paid in July, 1924, shortly after the passage of the revenue act of 1924 (c. 234, 43 Stat. 253; approved June 2, 1924). The revenue acts of 1921 and 1924 provided different bases for calculating the interest on refunds.

The act of 1921 provided that (42 Stat. 316):

(1) "If the tax was paid under a specific and detailed protest, or if the tax was paid as the result of an additional assessment, interest on the refund should be calculated from the date the tax was paid"; or

(2) "If no protest was made and the tax was not paid as the result of an additional assessment, the interest on the refund should be calculated from a date six months after the filing of claim for refund."

There were also provisions in the 1921 act which the United States claims contemplated no interest on refunds allowed by the commissioner on his own initiative and not on grounds assigned in the claim for refund.

(C) The 1924 act, on the other hand, provided (43 Stat. 346) that in all cases of refunds the interest should be computed from the dates the taxes were paid.

In the case at bar, the refund was allowed and the principal amount refundable was paid in 1923, when the 1921 act was in effect, and the United States contends that the right to interest became fixed at that time under the existing law, and was not altered by a delay in computing and paying the interest until after the passage of the act of 1924. The Court of Claims took the other view and allowed interest under the 1924 act from the date the tax had been paid.

If the 1921 act does apply, two further questions remain:

First. Were such protests as were filed when the taxes were paid sufficient to bring into operation that provision of the 1921 act allowing interest on refunds from date of payment of the tax, and

Second. Under sections 250, 252, and 1324(a) of the revenue act of 1921, was any interest payable on a refund allowed by the commissioner on his own motion and not on a ground assigned in the claim for refund?

(D) The United States contends that the protests were not sufficient and that such interest as is allowable should be computed as provided in the act of 1921 from a date six months after the claim for refund was filed, and that with respect to some items refunded on different grounds than those asserted in the claims, no interest at all was payable.

Suit was instituted by the Magnolia Petroleum Company in the Court of Claims to recover the sum of $365,964.54 alleged to be due for interest on refunds of income and excess profits taxes for the years 1916 and 1917.

It appears that on March 27, 1917, the Magnolia Petroleum Company filed its income tax returns for the calendar year 1916, indicating a tax liability of $806,079.86, which was paid June 14, 1917. On June 15, 1917, the plaintiff filed an amended return which indicated an additional tax of $9,772.86, which was paid August 7, 1917. Payments of these taxes were not made under protest. On June 17, 1918, plaintiff filed its second amended return for 1916, which indicated an overpayment of tax of $30,217.11. At the same time plaintiff filed a claim for the refund of that amount. On September 20, 1920, plaintiff filed a supplemental claim for refund of 1916 taxes in the sum of $114,565.44. Attached to this claim was a third amended return which indicated that the plaintiff's total tax for said year was $101,287.28.

(E) It further appears that on May 18, 1918, the plaintiff filed its income and excess profits tax returns for the year 1917. On May 27, 1918, plaintiff filed an amended return indicating a tax liability of $1,966,600.87, which was paid on June 15, 1918. Payment was accompanied by a protest alleging:

"The grounds, among others, of such protest and involuntary payment, are that said acts are unconstitutional and void, their terms ambiguous and uncertain; that the Magnolia Petroleum Company is not a corportion, joint-stock company, or association or insurance company within the meaning and intendment of said acts; the regulations which have been attempted to be prescribed under said acts are not authorized thereby and that the method of applying the rates of taxation as is attempted in article 16 and in other articles of said regulations under the war excess profits tax law is arbitrary and unjust, and without sanction in said act."

Thereafter plaintiff discovered error in its return and, accordingly, on January 28, 1919, filed a second amended return indicating an additional tax of $5,390.17. The additional tax was never paid. On June 12, 1920, plaintiff filed a claim for the refund of the $1,966,600.87 taxes theretofore paid. On September 20, 1920, plaintiff filed a supplemental claim for refund of the 1917 taxes in the sum of $1,005,519.42. Attached to this claim for refund was a third amended return for 1917, indicating a tax liability for that year in the sum of $961,081.45.

On October 8, 1923, the Commissioner of Internal Revenue notified the plaintiff that its claim for the refund of 1916 taxes in the sum of $114,565.44 would be allowed for $105,571.95, and that its claim for the refund of the 1917 taxes in the sum of $1,966,600.87 would be allowed in the sum of $1,131,075.86 and that its claim for the refund of taxes for said year in the sum of $1,005,519.42 would be rejected in full.

On November 22, 1923, plaintiff received certificates of overassessment and Treasury warrants for the sums of $105,571.95 and $1,131,075.86. By the certificates of overassessments plaintiff was notified "interest status will be determined as soon as necessary data can be assembled."

On January 18, 1924, plaintiff was advised:

"Section 1324(a) of the revenue act of 1921 authorizes the payment of interest on amounts refunded only upon the allowance of refund or credit claims. It is, therefore, held that if a refund is made subsequent to the filing of a refund claim, that part of the overassessment which is based upon the ground or basis of the claim constitutes an allowance of the claim in that amount (upon which interest is payable), but that interest is not allowable upon any amount other than on the basis of the claim, the latter amount being allowed under the general authority of section 252 of the revenue act, without reference to a claim having been filed."

Plaintiff was also advised that upon the basis of the above, interest had been computed and amounted to $34,737.15. Interest was computed on $105,556.34 from April 26, 1921, six months after the

claim was filed, to October 11, 1923, the date of allowance, and on various amounts of the 1917 tax from six months after the claims were filed, to the date of allowance on October 11, 1923. Taxpayer was advised that if it took exception to the ruling, or desired a review, it might within thirty days file an appeal with a brief or memorandum in support thereof.

G On February 9, 1924, the commissioner advised the plaintiff that with reference to the protest against the payment of the 1917 tax that the protest was general in its terms and did not contain the required specific or detailed basis, and that therefore it was insufficient to require payment of interest from the date of the payment of the tax.

On July 2, 1924, the commissioner advised the plaintiff that its appeal had been considered, and that—

"In connection with the claim that interest should be paid upon the amounts refunded from the respective dates of payment of the taxes, you are informed that bureau files contain no copy of a specific protest with regard to the payment of the 1916 taxes, and it is held that the protest under which it is contended that the 1917 taxes were paid is not a specific protest setting forth in detail the basis of and reasons for such protest. The language used in the protest in question is general, and the taxpayer merely contends that the regulations and the method of applying the rates of tax are arbitrary and unjust, but no attempt was made to specify in what manner the regulations or the method of imposing the tax was improper. Such a general statement is not a sufficient protest within the meaning of section 1324–a of the revenue act of 1921.

"With respect to the contention that the claims filed, especially those attached to the third amended returns, covered the grounds upon which the refunds were made you are informed that a claim must set forth specifically the grounds upon which the refund is sought, and a claim covering certain items can not be subsequently amended to include others. After a careful review, it is held that the analysis of the allowance of claims included in bureau letter dated January 18, 1924, is correct, and that interest has been properly computed with respect to such part of the refunds attributable to the points raised by the taxpayer in the claims filed. The fact that the certificates of overassessment recited that the refunds were based upon the taxpayer's claim is not controlling for interest purposes. Accordingly, the taxpayers' appeal was denied with respect to all points except the date upon which the claim for the refund of 1917 taxes was filed, as indicated above."

H It was discovered that an error had been made in the computation of interest on the 1916 refund and that interest should have been computed from March 20, 1921, instead of from April 26, 1921.

On July 21, 1924, the plaintiff received Treasury warrant for $35,369.05, dated July 18, 1924. Plaintiff indorsed the warrant without prejudice to institute a suit to recover the balance of interest claimed by the plaintiff and the warrant was paid.

Thereafter this suit was instituted. It was contended by plaintiff that section 1324(a) of the revenue act of 1921 was repealed by section 1019 of the revenue act of 1924, and that that section was in turn repealed by section 1116 of the revenue act of 1926, c. 27, 44 Stat. 9, 119, and that plaintiff was entitled to have interest computed under the last-mentioned section from the date of the payment of the taxes to October 11, 1923.

Judgment was ordered entered for the plaintiff in the sum of $365,799.42, being interest computed from the dates of payment of the taxes to October 11, 1923.

ASSIGNMENT OF ERROR

The Court of Claims erred:

1 First. In holding that the revenue act of 1924 was applicable to the calculation of the interest payable on the refund claims of 1916 and 1917 filed by plaintiff and allowed in certain sums October 11, 1923.

Second. In holding that the letter set forth in the court's special findings of fact V was a written specific protest which set forth in detail the basis of and reasons for such protest.

REASONS FOR GRANTING WRIT

The decision in the instant case affects thousands of cases; and while the amount involved can not be calculated in a definite sum, it will run into millions of dollars. The decision below is opposed to the established practice and rulings of the Bureau of Internal Revenue. It also seems that there is slight basis for the decision of the court below that although the refund was allowed and the principal paid when the 1921 act was in force and a cause of action for interest on the basis fixed by the 1921 act then arose and became a fixed liability of the United States, the right changed and an increased liability for interest resulted because the payment of the interest was deferred until the passage of the 1924 act.

For these reasons, it is respectfully submitted that this petition should be granted.

WILLIAM D. MITCHELL,
Solicitor General.

JUNE, 1927.

1 In Court of Claims of the United States

No. E–11

MAGNOLIA PETROLEUM COMPANY, A JOINT STOCK ASSOCIATION, E. R. BROWN, R. WAVERLY SMITH, E. E. PLUMLY, W. C. PROCTOR, COURTENAY MARSHALL, F. V. FAULKNER, A. C. EBIE, D. C. STEWART, B. H. STEPHENS, AND W. H. FRANCIS, TRUSTEES

vs.

THE UNITED STATES

I. *History of proceedings*

On January 6, 1925, the plaintiff filed its original petition, to which the defendant filed a general traverse on March 7, 1925.

On May 19, 1925, by leave of court, the plaintiff filed its amended petition.

On August 4, 1926, the plaintiff filed a motion suggesting death of John Sealy, former trustee, and for leave to continue cause in names of surviving trustees. Said motion was allowed by court August 11, 1926.

On August 11, 1926, by leave of court, the plaintiff filed its second amended petition.

Said second amended petition is as follows:

II. *Second amended petition. Filed Aug. 11, 1926*

To the honorable, the Chief Justice and the Judges of the Court of Claims:

Plaintiff is a joint stock association, organized on April 24, 1911, in the State of Texas, with its principal office in the city of Dallas in said State. The following individuals, each of whom is a citizen of the United States, constitute plaintiff's duly chosen board
2 of trustees; E. R. Brown, R. Waverley Smith, E. E. Plumly, W. C. Proctor, Courtenay Marshall, F. V. Faulkner, A. C. Ebie, D. C. Stewart, B. H. Stephens, and W. H. Francis.

I

On March 27, 1917, plaintiff duly filed with the collector of internal revenue at Austin, Texas, its return of income for the calendar year 1916 under the revenue act of 1916, approved September 8, 1916 (39 Stats. L. 756), which return indicated a tax liability of $206,079.86.

On June 14, 1917, plaintiff paid said tax to the collector of internal revenue as aforesaid.

On June 15, 1917, plaintiff filed with the aforesaid collector an amended income-tax return for the year 1916, which indicated an additional income tax for said year in the amount of $9,772.86,

which sum plaintiff paid to the said collector on August 7, 1917, pursuant to an additional assessment in said amount.

Thus plaintiff paid income taxes for the year 1916 in the total amount of $215,852.72. Plaintiff is unable to state and therefore does not make a positive averment in respect of whether or not the aforesaid payments were accompanied by protests, as it has been unable after diligent effort, to locate copy of any protest which accompanied these payments, but in this regard plaintiff states that on or about February 1, 1924, it received from the collector of internal revenue at Austin, Texas, a letter in words and figures as follows:

3

TREASURY DEPARTMENT,
INTERNAL REVENUE SERVICE,
OFFICE OF THE COLLECTOR, FIRST DISTRICT OF TEXAS,
Austin, Texas, January 31, 1924.

MAGNOLIA PETROLEUM COMPANY,
Dallas, Texas.

Attention Mr. Sinclair:

SIR: Reference is made to your personal visit to this office and to your telephone conversation concerning amount paid for 1916 as income tax.

You state that it is your opinion that the amount was paid under specific protest. I have made a very thorough search of the records of this office, but am unable to locate the protest or the copy thereof. It is presumed that if a protest was made that the same was left attached to the return for the year in question. It further appears from the list in this office that the amount was paid under protest.

Respectfully,

JAMES W. BASS, *Collector.*

Plaintiff calls upon the defendants for the production of the original protest as mentioned in the aforesaid letter and for full information in respect of all facts which justified the collector in making the aforesaid statement that the tax was paid under protest.

II

Thereafter, to wit, on June 17, 1918, plaintiff filed its second amended return for the year 1916, which indicated that plaintiff had overpaid its income tax for that year in the amount of $30,217.11, and plaintiff at the same time duly filed with the aforesaid collector a refund claim in said amount.

4

III

On September 20, 1920, plaintiff filed with the aforesaid collector of internal revenue a supplemental claim for the refundment of income taxes for the year 1916 in the amount of $114,565.44, "or such greater amount as may be legally refundable." There was attached to such supplemental claim and made a part thereof, a third

amended income tax return for the year 1916, which indicated plaintiff's total tax liability for said year to be $101,287.28. The amount stated in the aforesaid supplemental claim, viz, $114,565.44, is the difference between the total amount of taxes which plaintiff had previously paid for said year, viz, $215,852.72, and the amount of tax due under the aforesaid third amended return.

IV

By letter dated October 8, 1923, signed by J. G. Bright, Deputy Commissioner of Internal Revenue, plaintiff was informed that "claim for refund of $114,565.44 income taxes for the year 1916 will be allowed for $105,571.95 and rejected for $8,993.49," and that the claim for the refund of $30,217.11, hereinbefore mentioned, would be rejected in full. A true and correct copy of the aforesaid letter is attached hereto, made a part hereof and designated Exhibit A.

On November 19, 1923, plaintiff received through its counsel from the aforesaid J. G. Bright, Deputy Commissioner of Internal Revenue, a certificate of overassessment in respect of the year 1916, numbered 118905, and in the amount of $105,571.95. In the aforesaid certificate it is stated that "this overassessment is allowed in connection with the examination of a claim for refund filed by you within the required time as prescribed by section 3228 of the revised statutes as amended by section 1316 of the revenue act of 1921." Plaintiff was also informed by the aforesaid certificate of overassessment that "interest status will be determined as soon as necessary data can be assembled." A true and correct copy of the aforesaid certificate of overassessment is attached hereto, made a part hereof and designated Exhibit B.

The aforesaid certificate of overassessment was accompanied by treasury warrant payable to the order of plaintiff, by which $105,571.95 on account of income taxes for the year 1916 were refunded to plaintiff.

V

On May 18, 1918, plaintiff duly filed with the collector of internal revenue at Austin, Texas, its income and war excess profits tax return for the calendar year 1917 under the revenue act of 1916 as amended by the revenue act of 1917, approved October 3, 1917 (40 Stats. L. 300). Immediately thereafter, because of the settlement by the Bureau of Internal Revenue of the tax liability of plaintiff for the years 1912, 1913, and 1914, and consequent readjustment of invested capital, it became necessary to prepare an amended return for the year 1917 which plaintiff filed with the aforesaid collector of internal revenue on May 27, 1918. Such amended return indicated a total tax liability for the year 1917 in the amount of $1,966,600.87, which sum was paid by plaintiff to said collector on June 15, 1918, involuntarily, under duress and accompanied by a written, specific protest setting forth in detail the basis of and reasons for such

6 protest. A true and correct copy of said protest is attached hereto, made a part hereof and designated Exhibit C. Thereafter an error was discovered by plaintiff in the amount of interest received by it in the year 1917 and a second amended return containing a correction of such error and indicating additional tax for that year in the amount of $5,390.17, was filed with the aforesaid collector of internal revenue on January 28, 1919, but plaintiff never received notice of assessment or demand for such additional tax and plaintiff never paid such additional tax under said second amended return.

VI

On June 12, 1920, plaintiff duly filed with the aforesaid collector of internal revenue claim for the refundment of the aforesaid payment of $1,966,600.87.

Thereafter, to wit, on September 20, 1920, plaintiff filed with the aforesaid collector of internal revenue a supplemental refund claim on account of the year 1917 for the sum of $1,005,519.42, "or such greater amount as may be legally refundable." There were attached to such claim and made a part thereof, third amended income and war excess profits tax returns for the calendar year 1917, which indicated a total income and war excess profits tax liability on the part of plaintiff for the year 1917 in the amount of $961,081.45. The amount of the aforesaid supplemental claim is the difference between the total amount of taxes which plaintiff had previously paid for said year, viz., $1,966,600.87, and the amount of tax due under the aforesaid third amended returns.

VII

7 By letter signed by Deputy Commissioner of Internal Revenue J. G. Bright, and bearing date October 8, 1923 (Exhibit A), plaintiff was informed that "the claim for refund of $1,966,600.87 income and profits tax for 1917 will be allowed for $1,131,075.86 and rejected for $835,525.01," and also that the claim for refund of $1,005,519.42, income and profits taxes for the year 1917, will be rejected in full.

On November 19, 1923, plaintiff received through its counsel from the aforesaid J. G. Bright, Deputy Commissioner of Internal Revenue, a certificate of overassessment in respect of the year 1917, No. 16,366, and in the amount of $1,131,075.86. In the aforesaid certificate it is stated that "This overassessment is allowed in connection with the examination of a claim for refund filed by you within the required time as prescribed by section 3228 of the Revised Statutes as amended by section 1316 of the revenue act of 1921." Plaintiff was also informed by the aforesaid certificate of overassessment that "interests status will be determined as soon as necessary data can be assembled." A true and correct copy of the aforesaid certificate of overassessment is attached hereto, made a part hereof and designated Exhibit D.

The aforesaid certificate of overassessment was accompanied by treasury warrant payable to the order of plaintiff by which $1,131,075.86 on account of income and war excess profits taxes for the year 1917, were refunded to plaintiff.

VIII

The refundments, under refund claims as hereinbefore stated, of $105,571.95 for the year 1916, and $1,131,075.86 for the year 1917, were made by treasury warrant No. 368,611, payable to the order of the plaintiff in the amount of $1,236,647.81, which was
8 delivered to plaintiff's counsel on November 19, 1923. Shortly after the receipt of the hereinbefore mentioned certificates of overassessment and treasury warrant plaintiff, by its counsel, personally brought to the attention of the aforesaid J. G. Bright, Deputy Commissioner of Internal Revenue, the herveinbefore quoted statements made in the certificates of overassessment that interest status would be determined as soon as necessary data could be assembled and demanded of said J. G. Bright the immediate payment of interest upon the total of the refund as represented by the aforesaid treasury warrant from the date of the respective payments of the amounts refunded up to the date of the allowance of the respective refund claims. By letter dated January 18, 1924, and addressed to plaintiff's counsel, plaintiff was informed that the interest which would be allowed it on account of the refundment of taxes for the year 1916 amounted to $19,171.21, and that the interest which would be allowed it on account of the refundment of taxes for the year 1917 amounted to $15,565.94, or a total payment of interest of $34,737.15, and in such letter plaintiff was further informed that interest was allowable in the case of each of the aforesaid years from a date six months after each of the claims, which were subsequently allowed, was filed, and that interest was not allowable upon any amount refunded upon a ground other than that contained in the claims. Plaintiff in said letter was also informed, "If you take exception to the ruling made herein, or a review is desired, you may, within thirty days from the date of this letter, file an appeal, with a brief or memorandum in support thereof." A true and correct copy of the aforesaid letter is attached hereto, made a part hereof, and designated Exhibit E.

9 After the receipt of the aforesaid letter plaintiff by its counsel further discussed with the said J. G. Bright the matter of the payment of interest upon the refundment of taxes theretofore made to plaintiff. Under date of February 9, 1924, the said J. G. Bright wrote to plaintiff's counsel a letter in which it was stated that certain records in the Bureau of Internal Revenue failed to show that taxes paid by plaintiff for the year 1916 were paid under protest and further informing plaintiff that the written protest which accompanied its payment of taxes for the year 1917 was insufficient under the terms of section 1324 (a) of the revenue act of 1921. A true

and correct copy of the aforesaid letter dated February 9, 1924, is attached hereto, made a part hereof, and designated Exhibit F.

In accordance with the terms of the above mentioned letter dated January 18, 1924, and within an extension of time thereafter duly granted, plaintiff on February 23, 1924, filed with the Commissioner of Internal Revenue an appeal and printed brief in support of its claim for additional interest allowance. By letter bearing date July 2, 1924, addressed to plaintiff's counsel and signed by the aforesaid J. G. Bright, Deputy Commissioner of Internal Revenue, the position as hereinbefore stated of the Commissioner of Internal Revenue in respect of the additional allowance of interest was adhered to, but in said letter it was stated that the amount to be allowed as interest would be increased from $34,737.15 to $35,369.05, such increase being due solely to the fact that refund claim for the year 1917 was found by the commissioner to have been filed on September 20, 1920, instead of on October 26, 1920, as was indicated in the above mentioned letter from the aforesaid J. G. Bright to the
10 plaintiff bearing date January 18, 1924. A true and correct copy of the aforesaid letter, dated July 2, 1924, is attached hereto, made a part hereof, and designated Exhibit G.

The Commissioner of Internal Revenue has continuously thereafter declined and refused, and still declines and refuses, to pay to plaintiff interest on the aforesaid refunds in any amount in excess of $35,369.05.

IX

Thereafter, to wit, on or about the 21st day of July, 1924, plaintiff received Treasury warrant No. 463623, bearing date July 18, 1924, payable to the order of plaintiff, in the amount of $35,369.05, upon which plaintiff made an endorsement in manner shown by letter dated July 28, 1924, from the general attorney of the plaintiff to the Commissioner of Internal Revenue in words and figures as follows:

"COMMISSIONER OF INTERNAL REVENUE,

"*Treasury Department, Washington, D. C.*

"DEAR SIR: With reference to your letter of July 2nd this year addressed to Barry Mohun, Transportation Building, 17th and H Streets, NW., Washington, D. C., bearing initials IT:R:CC:ECW:

"We have received Treasury check #463623 dated July 18, 1924, for $35,369.05, indicated by you in your said letter to be the refundment of interest allowed on 1916 and 1917 taxes of this company. We deposited this check for collection and endorsed same as follows:

"'Endorsement of this warrant for interest on account of
11 refund of internal revenue taxes erroneously collected in the years 1916 and 1917 and the acceptance of the proceeds thereof are solely upon the condition that by doing so the Magnolia Petroleum Company in nowise waives, modifies, or restricts its rights to further claim in the Treasury Department and/or to institute suit in the courts for the recovery of the balance of interest which

said company claims it is entitled to under the law, as set forth in printed brief heretofore filed in the office of Commissioner of Internal Revenue on the 23d of February, 1924.'

"This information is being given to you in order that you may be fully apprised in the premises, as it is the intention of the company to file suit for the unrefunded balance claimed by the company to be due.

"Yours very truly,

W. H. FRANCIS."

The aforesaid Treasury warrant, in the amount of $85,369.05, was duly paid by the United States, endorsed in manner above set forth, and the proceeds thereof were accepted by the plaintiff solely upon the conditions as stated in said endorsement and in the aforesaid letter dated July 28, 1924.

X

Section 1324 (a) of the revenue act of 1921, approved November 23, 1921 (42 Stats. L. 227) provided as follows:

"That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund or credit at the rate
12 of one-half of 1 per centum per month to the date of such allowance, as follows: (1) If such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest, from the time when such tax was paid, or (2) if such amount was not paid under protest but pursuant to an additional assessment, from the time such additional assessment was paid, or (3) if no protest was made and the tax was not paid pursuant to an additional assessment, from six months after the date of filing of such claim for refund or credit. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part."

By section 1100 of the revenue act of 1924, approved June 2, 1924 (43 Stats. L. 253, 352), section 1324 of the revenue act of 1921 was repealed. Said repeal took effect as provided in the aforesaid section 1100 upon the "enactment" of the revenue act of 1924 which occurred on June 2, 1924.

Section 1019 of the revenue act of 1924 is as follows:

"Upon the allowance of a credit or refund of any internal revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount. The term

"additional assessment" as used in this section means a
13 further assessment for a tax of the same character previously paid in part."

By section 1104 of the revenue act of 1924, section 1019 thereof took effect upon the "enactment" of said act which as shown occurred on June 2, 1924.

By section 1200 of the revenue act of 1926, approved February 26, 1926, section 1019 of the revenue act of 1924 was repealed. Said repeal took effect, as provided in the aforesaid section 1200, upon the enactment of the revenue act of 1926 which occurred on February 26, 1926.

Section 1116 of the revenue act of 1926 is as follows:

"(a) Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment made under the revenue act of 1921, the revenue act of 1924, or this act, then to the date of the assessment of that amount.

"(b) As used in this section—

"(1) The term 'additional assessment' means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency under Title II or Title III of the revenue act of 1924 or of this act;

"(2) The term 'date of the allowance of the refund' means, in the case of any income, war-profits, or excess-profits tax, the first date on which the Commissioner signs the schedule of overassessments in respect thereof.

"(c) This section shall be applicable to any refund paid, and to any credit taken, on or after the date of the enactment of this act, even though such refund or credit was allowed prior to such date."

XI

Plaintiff is advised by counsel, believes and therefore avers that because of the repeal of section 1324 of the revenue act of 1921 on June 2, 1924, the only provision of law in respect of the payment of interest upon refundments of taxes illegally collected which was in force on July 18, 1924, when interest was allowed to plaintiff by the Commissioner of Internal Revenue was section 1019 of the revenue act of 1924, and hence it was the duty of the Commissioner of Internal Revenue to pay to plaintiff interest on account of the aforesaid refundment of $1,236,647.81 in accordance with the terms of and command contained in the aforesaid section of the revenue act of 1924, i. e., from the respective dates of payment to the date of the

allowance of the refund, and that the failure and refusal of the Commissioner of Internal Revenue to pay to plaintiff interest in accordance with the terms of said section was unwarranted and not justified by any provision of law.

Plaintiff is further advised by counsel, believes and therefore avers that because of the repeal of section 1019 of the revenue act of 1924 on February 26, 1926, the only provision of law in respect of the payment of interest upon refundments of taxes illegally collected which is now in force is section 1116 of the revenue act of 1926 and hence it is the duty of the Commissioner of Internal Revenue to pay the plaintiff interest on account of the refundment to it of $1,236,647.81 on November 22, 1923, in accordance with the terms of and command contained in the aforesaid section of the revenue act of 1926, i. e., from the respective dates of payment to the date of the allowance of the refund, and that the failure and refusal of the Commissioner of Internal Revenue to pay to plaintiff interest in accordance with the terms of said section was unwarranted and not justified by any provision of law.

Plaintiff is further advised by counsel, believes and therefore avers that should it be held that interest should have been paid to plaintiff under the terms of section 1324 of the revenue act of 1921, it is entitled to receive on the amount of taxes refunded for the year 1916 interest at the rate of one-half of one per cent per month from
714 the date of payment of such tax, if the same were duly paid under protest, up to the date of the allowance of the claim and if such payment was not accompanied by such protest plaintiff is entitled to interest at said rate on $9,772.86 from the date of payment of the additional assessment of taxes for the year 1916 in that amount to the date of the allowance of the claim and on the balance of such refund for said year, viz., $95,799.09, plaintiff is entitled to interest at said rate from six months after claim was filed to the date that the claim was allowed, and that in respect of the year 1917 plaintiff is entitled to interest at said rate upon the tax refunded to plaintiff for said year, i. e., $1,131,075.86, from the date of the payment of the tax to the date of the allowance of the claim as hereinbefore set forth, since the payment was duly made under specific protest as required by subdivision (a) of section 1324 of the revenue act of 1921, and that the failure and refusal of the Commissioner of Internal Revenue to pay to plaintiff interest determined in the manner above set forth was unwarranted and not justified by any provision of law.

XII

Allowance of the respective refund claims for the years 1916 and 1917, as hereinbefore set forth, was made by the Commissioner of Internal Revenue on October 11, 1923, and is evidenced by the approval by the Commissioner of Internal Revenue on that date, of what is known as Schedule IT:A 7264.

XIII

Interest to which claimant is entitled as hereinbefore shown upon the respective claims, is as follows:

15

Year 1916:		
Interest on $105,571.95 at ½ of 1% per month from June 14, 1917, to October 11, 1923	$40,071.08	
Less interest paid plaintiff on July 21, 1924	19,171.21	
Net amount of interest to which claimant is entitled on account of year 1916		$20,899.87
Year 1917:		
Interest on $1,131,075.86 at ½ of 1% per month from June 15, 1918, to October 11, 1923	$361,262.51	
Less interest paid plaintiff on July 21, 1924	16,197.84	
Net amount of interest to which claimant is entitled on account of year 1917		345,064.67
Total		365,964.54

XIV

No action upon this claim, other than that hereinbefore set forth, has been taken before the Congress or any of the departments of the Government.

XV

Plaintiff and its trustees, respectively, have at all times borne true allegiance to the Government of the United States and have not in any way aided, abetted, or given encouragement to its enemies or aided in rebellion against the Government.

16

XVI

Plaintiff avers there is justly due and owing to it from the United States on account of the matters hereinbefore set forth, the sum of $365,964.54 after deducting all just set-offs and demands on the part of the United States; that it is the sole owner of the claim herein sued upon and that no assignment or transfer of the claim or any part thereof or any interest therein has been made.

Wherefore, plaintiff prays judgment against the United States for $365,964.54, with interest thereon from November 19, 1923.

Magnolia Petroleum Company, a joint stock association, E. R. Brown, R. Waverley Smith, E. E. Plumly, W. C. Proctor, Courtenay Marshall, F. V. Faulkner, A. C. Ebie, D. C. Stewart, B. H. Stephens, and W. H. Francis, trustees,

By BARRY MOHUN,
Attorney-in-Fact and Attorney of Record,
Transportation Building, Washington, D. C.

W. H. FRANCIS,
Dallas, Texas, of counsel.

[*Duly sworn to by Barry Mohun; jurat omitted in printing.*]

17-18 EXHIBIT A

Address reply to Commissioner of Internal Revenue and refer to IT:NR:G LWM-4.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, Oct. 8, '23.

MAGNOLIA PETROLEUM COMPANY,
Dallas, Texas.

SIRS: Your claims for refund of $30,217.11 and $114,565.44 income tax for 1916 and $1,005,519.42 and $1,966,600.87 income and excess profits taxes for 1917 have been examined and the results thereof are shown in the attached schedules.

The claims are based upon additional amounts claimed for depletion and depreciation for the years involved.

The claim for refund of $114,565.44 income taxes for the year 1916 will be allowed for $105,571.95 and rejected for $8,993.49 and the claim for refund of $1,966,600.87 income and excess profits tax for 1917 will be allowed for $1,131,075.86 and rejected for $835,525.01. The claims for refund of $30,217.11 income taxes for 1916 and $1,005,519.42 income and profits taxes for the year 1917 will be rejected in full.

The rejection of the claims in the above amounts will appear officially in the next schedule to be approved by the commissioner.

Respectfully,

J. G. BRIGHT,
Deputy Commissioner.
By S. ALEXANDER,
Head of Division.

Enclosures: Schedules 1 to 12.

19 EXHIBIT B

Treasury Department, Washington. Office of Commissioner of Internal Revenue, Income Tax Unit

IT:NR:G-LWM-4

CERTIFICATE OF OVERASSESSMENT

Number: 118905.
Allowed: $105,571.95.
Rejected: $

MAGNOLIA PETROLEUM COMPANY,
Dallas, Texas.

SIRS: An audit of your income tax returns for 1916, Form 1031, and examination of related claim (if any), indicates that the amount of tax assessed to you for this year was in excess of the amount due:

Original assessment (April, 1917; page 29, line 10)	$206,079.86
Additional assessment (June, 1917; page 6, line 20)	9,772.86
Total assessment	$215,852.72
Tax liability	110,280.77
Overassessment	105,571.95

The adjustments resulting in the above overassessment are fully outlined in schedules attached to a separate communication to you.

This overassessment is allowed in connection with the examination of a claim for refund filed by you within the required time as prescribed by section 3228 of the revised statutes as amended by section 1316 of the revenue act of 1921.

The amount of the overassessment will be applied as follows:

1. If the tax has not been paid, the amount will be abated by the collector of internal revenue for your district.

20 2. If the tax has been paid, the amount of the overpayment will either be credited against the tax due (if any) on income returns of years other than that on which the overpayment was made; or

3. The balance (if any) of the overpayment is refunded to you by check of the Treasury Department, forwarded herewith.

Interest status will be determined as soon as necessary data can be assembled.

Respectfully,

J. G. BRIGHT,
Deputy Commissioner,
By S. ALEXANDER,
Head of Division.

Schedule number: 7264.
District: 2nd Texas.
Amount abated: $
Amount credited: $
Year:
Account number: 6/176/20 4/17/29/10.
Amount refunded: $105,571.95.
Instructions executed, Oct. 30, 1923.

GEO. C. HOPKINS,
Collector Int. Rev.

21 EXHIBIT C

The Magnolia Petroleum Company hereby protests against the payment of income taxes which are alleged to be imposed by the act approved September 8, 1916, as amended by the act approved October 3, 1917, and the war income tax act embodied in said act approved October 3, 1917, and the war excess profits tax act embodied in said act approved October 3, 1917. The said company protests against the payment of said taxes in the amount of $1,966,600.87, or in any other amount at this time or any other time, and said taxes are paid, by the company under protest, involuntarily and under duress in order to avoid the penalties as prescribed in said acts for non-

payment which the collector of internal revenue for this district states he will enforce against said company in the event payment is not made. The grounds, among others, of such protest and involuntary payment are that said acts are unconstitutional and void, their terms ambiguous and uncertain; that the Magnolia Petroleum Company is not a corporation, joint-stock company, or association or insurance company within the meaning and intendment of said acts; the regulations which have been attempted to be prescribed under said acts are not authorized thereby, and that the method of applying the rates of taxation as is attempted in article 16 and in other articles of said regulations under the war excess profits tax law is arbitrary and unjust, and without sanction in said act. The said company hereby formally notifies the said collector of internal revenue and the Commissioner of Internal Revenue of its purpose and intention to institute suit or suits against them or either of them or against the United States, as the said company may be advised, for the recovery of said sum or any part thereof, together with interest and all proper costs.

MAGNOLIA PETROLEUM COMPANY,
By E. R. BROWN, *Vice President.*

[SEAL.]
Attest:
W. C. PROCTOR,
Assistant Secretary.

22 EXHIBIT D

Treasury Department, Washington. Office of Commissioner of Internal Revenue, Income Tax Unit

IT:NR:G-LWM-4

CERTIFICATE OF OVERASSESSMENT

Number: 16366.
Allowed: $1,131,075.86.
Rejected: $
MAGNOLIA PETROLEUM COMPANY,
Dallas, Texas.

SIRS: An audit of your income tax return for 1917, Forms 1031 and 1063, and examination of related claims (if any) indicates that the amount of tax assessed to you for this year was in excess of the amount due:

Original assessment (May, 1917, page 625, line 2)	$1,966,600.87
Tax liability	835,525.01
Overassessment	$1,131,075.86

The adjustments resulting in the above overassessment are fully explained in schedules attached to a separate communication to you.

This overassessment is allowed in connection with the examination of a claim for refund filed by you within the required time as prescribed by section 3228 of the Revised Statutes as amended by section 1316 of the revenue act of 1921.

The amount of the overassessment will be applied as follows:

1. If the tax has not been paid, the amount will be abated by the collector of internal revenue for your district.

23 2. If the tax has been paid, the amount of the overpayment will either be credited against the tax due (if any) on income returns of years other than that on which the overpayment was made; or

3. The balance (if any) of the overpayment is refunded to you by check of the Treasury Department, forwarded herewith.

Interest status will be determined as soon as necessary data can be assembled.

Respectfully,

J. G. BRIGHT,
Deputy Commissioner.
By S. ALEXANDER,
Head of Division.

Schedule number: 7264.
District: 2nd Texas.
Amount abated: $
Amount credited: $
Year:
Account Number: 5/18/625/2.
Amount refunded: $1,131,075.86.
Instructions executed, Oct. 30, 1923.

GEO. C. HOPKINS,
Collector Int. Rev.

24 EXHIBIT E

TT:T:CC:ECW JANUARY 18, 1924.

MR. BARRY MOHUN,
Transportation Building,
17th and H Streets, Washington, D. C.

In re Magnolia Petroleum Company, Dallas, Texas

SIR: Reference is made to your personal request for the allowance of interest on amounts refunded to the above-named taxpayer for the years 1916 and 1917.

Bureau records show that certificate of overassessment No. 118905 was issued in the amount of $105,571.95 for 1916 and certificate of overassessment No. 16366 was issued in the amount of $1,131,075.86 for 1917 and both of such amounts were listed and allowed as refunds on Schedule IT:A7264.

Section 1324 (a) of the revenue act of 1921 authorizes the payment of interest on amounts refunded only upon the allowance of refund or credit claims. It is, therefore, held that if a refund is made subsequent to the filing of a refund claim, that part of the overassessment which is based upon the ground or basis of the claim constitutes an allowance of the claim in that amount (upon which interest is payable), but that interest is not allowable upon any amount allowed other than on the basis of the claim, the latter amount being allowed under the general authority of section 252 of the revenue act, without reference to a claim having been filed.

Examination discloses that allowance of claims were made as follows:

1916 TAXABLE YEAR

Amount of overassessment allowed upon the basis of the second amended return and claim dated June 6, 1918 (filed June 18, 1918), for the refund of $30,217.11	$22,360.22
Amount of overassessment allowed upon the basis of the third amended return and claim dated July 12, 1920 (filed September 20, 1920), for the refund of $114,565.44	82,853.32
Amount of overassessment allowed upon the basis of points not raised in claims	358.41
Total overassessment for 1916	$105,571.95

1917 TAXABLE YEAR

No part of the overassessment was allowed upon the basis of claim dated June 9, 1920, for the refund of $1,996,030.87.	
Amount of overassessment allowed upon the basis of third amended return for claim dated July 12, 1920 (filed October 26, 1920), for the refund of $1,005,519.42	$105,556.34
Amount of overassessment attributable to points not raised in claims	1,025,519.52
Total overassessment for 1917	$1,131,075.86

It, therefore, appears that interest is allowable as follows:

On $22,360.22 from December 18, 1918 (six months after the claim was filed) to October 11, 1923 (the date of allowance of the claim	$6,457.20
On $82,853.32 from March 20, 1921 (six months after the claim was filed), to October 11, 1923	12,714.01
Total interest due on refund for 1916	$19,171.21
On $105,556.34 from April 26, 1921 (six months after the claim was filed), to October 11, 1923 (the date of allowance)	15,565.94
Total interest due on refunds for 1916 and 1917	$34,737.15

If you take exception to the ruling made herein, or a review is desired, you may, within thirty days from the date of this letter, file an appeal, with a brief or memorandum in support thereof.

Respectfully,

J. G. BRIGHT,
Deputy Commissioner.

EXHIBIT F

Address reply to Commissioner of Internal Revenue and refer to IT:R:CC:ECW.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, Feb. 9, 1924.

MR. BARRY MOHUN,
Transportation Building,
17th & H Streets, Washington, D. C.

In re Magnolia Petroleum Co., Dallas, Texas

SIR: Reference is made to bureau letter dated January 18, 1924, upon the subject of interest payable under section 1324(a) of the

revenue act of 1921 to the above-named taxpayer on refunds of overpayments of taxes for the years 1916 and 1917.

In connection with your subsequent verbal statement to the effect that a larger amount of interest is payable than indicated in said letter, for the reason that in your opinion the taxes were paid under protest, you are informed that the returns filed for the year 1916 do not indicate that a protest of any character was submitted in connection with the payment for that year. The receipts heretofore filed with the bureau by the taxpayer for payments of $206,079.86 and $9,772.86, showing the "paid" stamp of the collector dated June 14, 1917, and August 7, 1917, respectively, do not bear any notation to the effect that these payments were made under protest.

With respect to the year 1917, the receipt heretofore filed with the bureau by the taxpayer for the payment of $1,966,600.87, showing the "paid" stamp of the collector dated June 29, 1918, contains a rubber-stamp impression "paid under protest." The files of the bureau contain a document marked "copy," a copy of which
28 is transmitted herewith. In this document it is stated that protest is made against the payment of taxes in the amount of $1,966,600.87. This protest was apparently filed with the first amended return for 1917, inasmuch as an office record copy of that return shows a tax liability in said amount. The essential part of the protest is as follows:

"The grounds among others of such protest and involuntary payment are that said acts are unconstitutional and void, and their terms ambiguous and uncertain; that the Magnolia Petroleum Company is not a corporation, joint stock company, or association or insurance company within the meaning and intendment of said acts; the regulations which have been attempted to be prescribed under said acts are not authorized thereby; and that the method of applying the rates of taxation as is attempted in article 16 and in other articles of said regulations under the war excess profits tax law is arbitrary and unjust and without the sanction in said act."

It will be noted that this protest is general in terms and does not contain a specific or detailed basis. Inasmuch as this document is not specific and does not set forth in detail the basis of and reasons for such protest, thus advising the Government specifically of the taxpayer's basis for alleging that the tax had been improperly assessed and collected, and further does not specify the basis upon which the refund for the year involved was made, it is held that such protest is insufficient under the terms and provisions of section 1324 (a) of the revenue act of 1921 to require the payment of interest

from the date of payment of the tax upon any part of the amount refunded for 1917.

Respectfully,

J. G. BRIGHT,
Deputy Commissioner.

Enclosure.

29 EXHIBIT G

Address reply to Commissioner of Internal Revenue and refer to IT:R:CC:ECW.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, July 2, 1924.

Mr. BARRY MOHUN,
Transportation Building,
17th & H Streets N.W., Washington, D. C.

In re Magnolia Petroleum Co., Dallas, Texas

SIR: Reference is made to your letter dated February 23, 1924, transmitting an appeal to the commissioner from the conclusions reached by this office in connection with proposed allowances of interest on refunds of taxes overpaid for the years 1916 and 1917 by the above-named taxpayer.

Upon consideration of the appeal, it is held that interest is payable in the amounts indicated in the letter from this office dated January 18, 1924, except that in view of the fact that the claim for the refund of taxes paid for 1917 was apparently filed September 20, 1920 (instead of October 26, 1920, as indicated in said letter) interest is payable on $105,536.34 from March 20, 1920, six months after such date.

The interest found due, therefore, amounts to $19,171.21 on the refund of 1916 taxes, and $16,197.84 on the refund of 1917 taxes.

30 In connection with the claim that interest should be paid upon the amounts refunded from the respective dates of payment of the taxes, you are informed that bureau files contain no copy of a specific protest with regard to the payment of the 1916 taxes, and it is held that the protest under which it is contended that the 1917 taxes were paid is not a specific protest setting forth in detail the basis of and reasons for such protest. The language used in the protest in question is general, and the taxpayer merely contends that the regulations and the method of applying the rates of tax are arbitrary and unjust, but no attempt was made to specify in what manner the regulations or the method of imposing the tax was improper. Such a general statement is not a sufficient protest within the meaning of section 1324-a of the revenue act of 1921.

With respect to the contention that the claims filed, especially those attached to the third amended returns, covered the grounds upon which the refunds were made you are informed that a claim must set

forth specifically the grounds upon which the refund is sought, and a claim covering certain items cannot be subsequently amended to include others. After a careful review, it is held that the analysis of the allowance of claims included in bureau letter dated January 18, 1924, is correct, and that interest has been properly computed with respect to such part of the refunds attributable to the points raised by the taxpayer in the claims filed. The fact that the certificates of overassessment recited that the refunds were based upon the taxpayer's claim is not controlling for interest purposes. Accordingly, the taxpayer's appeal was denied with respect to all points except the date upon which the claim for the refund of 1917 taxes was filed, as indicated above.

The interest found due will be scheduled for allowance and payment.

Respectfully,

J. G. BRIGHT,
Deputy Commissioner.

31 III. *General traverse*

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered as provided by Rule 34.

IV. *Argument and submission*

On January 13, 1927, this case was argued and submitted on merits by Mr. Barry Mohun, for the plaintiff, and by Mr. Alexander H. McCormick, for the defendant.

32 V. *Special findings of fact, conclusion of law, and opinion of the court by Moss, J. February 14, 1927*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Special findings of fact

I

Plaintiff is a joint-stock association, organized April 24, 1911, in the State of Texas, with its principal office in the city of Dallas, in said State. The following individuals, each of whom is a citizen of the United States, constitute plaintiff's duly chosen board of trustees: E. R. Brown, R. Waverley Smith, E. E. Plumly, W. C. Proctor, Courtenay Marshall, F. V. Faulkner, A. C. Ebie, D. C. Stewart, B. H. Stephens, and W. H. Francis. Plaintiff has always rendered its returns under the Federal taxing statutes on a calendar-year basis.

II

On March 27, 1917, plaintiff filed with the collector of internal revenue at Austin, Tex., its return of income for the calendar year 1916, under the revenue act of 1916, 39 Stat. 756, which return indicated a tax liability of $206,079.86. Plaintiff paid the aforesaid tax to the collector of internal revenue at Austin, Tex., on June 14, 1917.

On June 15, 1917, plaintiff filed with the aforesaid collector an amended income-tax return for the year 1916, which indicated an additional income tax for said year in the amount of $9,772.86. Thereafter the additional taxes shown by said amended return were the subject of an additional assessment, which was made by the Commissioner of Internal Revenue, of income taxes due by the plaintiff for the year 1916, and said additional income taxes in the amount of $9,772.86 were paid under the aforesaid additional assessment, and pursuant to notice of "additional assessment," by plaintiff to the collector of internal revenue at Austin, Tex., on August 7, 1917.

Thus the total income taxes paid by plaintiff for the year 1916 were in the amount of $215,852.72. Said taxes were not paid under protest.

33

III

On June 17, 1918, plaintiff duly filed with the aforesaid collector of internal revenue its second amended income tax return for the year 1916, which indicated that plaintiff had overpaid its income tax for that year in the amount of $30,217.11. The aforesaid second amended return showed changes and adjustments which resulted in additions to income on account of accrued earnings from some of the oil leases purchased by plaintiff from the McMan Oil Co. as of December 1, 1916, and there were deductions from income shown by said amended return on account of the purchase of the aforesaid leases because of depreciation and depletion both of properties acquired from the McMan Oil Co. and other properties. The said second amended return also contained adjustments of operating expenses, depreciation on property not used directly in the production of oil, and adjustments in respect of loss on sale of bonds below par. The aforesaid second amended return was attached to and made part of a claim for refund of $30,217.11, which claim for refund was duly filed by plaintiff with the Commissioner of Internal Revenue on June 17, 1918.

IV

On September 20, 1920, plaintiff filed with the collector of internal revenue at Dallas, Tex., a third amended return for the year 1916 which indicated plaintiff's tax liability for said year to be in the amount of $101,287.28. The aforesaid third amended return was attached to and made a part of a refund claim which was filed with

the collector of internal revenue at Dallas, Tex., on September 20, 1920, as aforesaid, and was for the refundment of $114,565.44 "or such greater amount as is legally refundable."

V

On May 18, 1918, plaintiff duly filed with the collector of internal revenue at Austin, Tex., its income and war excess profits tax returns for the calendar year 1917 under the revenue act of 1916 as amended by the revenue act of 1917, approved October 3, 1917. 40 Stat. 300. Immediately thereafter, because of the settlement by the Bureau of Internal Revenue of the tax liability of plaintiff for the years 1912, 1913, and 1914, and consequent readjustment of invested capital, it became necessary to prepare amended returns for the year 1917 which plaintiff filed with the aforesaid collector of internal revenue on May 27, 1918. The plaintiff's total tax liability shown by the aforesaid amended returns was $1,966,600.87, which was paid to the collector of internal revenue at Austin, Tex., on June 15, 1918. The payment was made involuntarily, under duress, and in order to avoid distraint proceedings by the collector against plaintiff's property and the payment of said taxes by plaintiff was accompanied by a written specific protest which set forth in detail the basis of and reasons for such protest. Such protest was in words and figures as follows:

"The Magnolia Petroleum Company hereby protests against the payment of income taxes which are alleged to be imposed by
34 the act approved September 8, 1916, as amended by the act approved October 3, 1917, and the war income-tax act embodied in said act approved October 3, 1917, and the war excess profits tax act embodied in said act approved October 3, 1917. The said company protests against the payment of said taxes in the amount of $1,966,600.87, or in any other amount at this time or any other time, and said taxes are paid by the company under protest, involuntarily and under duress, in order to avoid the penalties as prescribed in said acts for nonpayment which the collector of internal revenue for this district states he will enforce against said company in the event payment is not made. The grounds, among others, of such protest and involuntary payments, are that said acts are unconstitutional and void, their terms ambiguous and uncertain; that the Magnolia Petroleum Company is not a corporation, joint-stock company, or association or insurance company within the meaning and intendment of said acts; the regulations which have been attempted to be prescribed under said acts are not authorized thereby and that the method of applying the rates of taxation as is attempted in article 16 and in other articles of said regulations under the war excess profits tax law is arbitrary and unjust, and without sanction in said act. The said company hereby formally notifies the said collector of internal revenue and the Commissioner of Internal Revenue of its purpose and intention to institute suit or suits against them on either

of them or against the United States, as the said company may be advised, for the recovery of said sum or any part thereof, together with interest and all proper costs.

"MAGNOLIA PETROLEUM COMPANY,
[SEAL.] "By E. R. BROWN, *Vice President.*
"Attest:
"W. C. PROCTOR,
"*Assistant Secretary.*"

Thereafter an error was discovered by plaintiff in the amount of interest received by it in the year 1917, and a second amended return containing a correction of such error and indicating additional tax for that year in the amount of $5,390.17, was filed with the aforesaid collector of internal revenue on January 28, 1919, but plaintiff never received notice of assessment or demand for such additional tax and plaintiff never paid such additional tax under said second amended return.

VI

On June 12, 1920, plaintiff duly filed with the aforesaid collector of internal revenue claim for the refundment of the aforesaid payment of $1,966,600.87. The reasons given in support of said claim were as follows:

"1. Said Magnolia Petroleum Company is a joint stock association organized by contract and not under any statute.

"2. That the payment of $1,966,600.87 was made involuntarily under duress and accompanied by formal written protest.

"3. Said amount was illegally and erroneously assessed and collected in that the statutes imposing the tax are ambiguous and uncertain in terms and are unconstitutional and void; and further, the regulations which have been attempted to be prescribed under said acts are not authorized thereby, and particularly the method of applying the rates of taxation, as is attempted in article 16 and in other articles of said regulations under Title II of the act approved October 3, 1917, is arbitrary and unjust and without sanction under said act.

"4. That the Magnolia Petroleum Company is not a corporation created under the law or laws of the United States or of any State, Territory, or District thereof, within the meaning of the definition of the terms "domestic" and "corporation," as used in section 200 of the war excess profits tax law of October 3, 1917.

"5. Under the terms of Treasury Decision 2956 defining 'discovery' this company is entitled to a refund of a large part of the aforesaid taxes, the exact amount of which is not known to the company at this time, but the subject is being thoroughly investigated, and as soon as the figures are definitely ascertained a proper showing in respect thereof will be made to the department in accordance with prescribed rules and regulations."

VI

Thereafter, to wit, on September 20, 1920, plaintiff filed with the aforesaid collector of internal revenue another refund claim on account of the year 1917 for the sum of $1,005,519.42, "or such greater amount as is legally refundable." There were attached to such claim and made a part thereof, third amended income and excess-profits tax returns for the calendar year 1917, which indicated a total income and war excess-profits tax liability on the part of plaintiff for the year 1917 in the amount of $961,081.45.

VII

Shortly after plaintiff, on September 20, 1920, filed its aforesaid refund claims for the years 1916 and 1917 of which claims a third amended return for each of such years was made a part, plaintiff, by its proper representatives actively negotiated with officials of the Bureau of Internal Revenue to secure settlement of its taxes for the years 1916 and 1917 and refunds of overpayments which it had made for said years.

VIII

Plaintiff furnished to the proper representatives of the Bureau of Internal Revenue all necessary facts and data in support of its refund claims theretofore filed for the years 1916 and 1917 and in a manner acceptable to the officials of said bureau and in accordance with its rules and regulations.

IX

Under date of October 8, 1923, the Commissioner of Internal Revenue advised plaintiff in respect of its refund claims for the years 1916 and 1917 as follows:

"Your claims for refund of $30,217.11 and $114,565.44 income tax for 1916 and $1,005,519.42 and $1,966,600.87 income and excess profits taxes for 1917 have been examined, and the results thereof are shown in the attached schedules.

36 "The claims are based upon additional amounts claimed for depletion and depreciation for the years involved.

"The claim for refund of $114,565.44 income taxes for the year 1916 will be allowed for $105,571.95 and rejected for $8,993.49, and the claim for refund of $1,966,600.87 income and excess profits tax for 1917 will be allowed for $1,131,075.86 and rejected for $835,525.01. The claims for refund of $30,217.11 income taxes for 1916 and $1,005,519.42 income and profits taxes for the year 1917 will be rejected in full.

"The rejection of the claims in the above amounts will appear officially in the next schedule to be approved by the commissioner."

X

The Commissioner of Internal Revenue upon facts duly furnished him by plaintiff with its refund claims, or separately, and upon facts agreed upon, allowed plaintiff's refund claims on October 11, 1923, as follows:

"Year 1916, claim filed September 20, 1920, for 114,565.44, allowed for $105,571.95.

"Year 1917, claim filed June 12, 1920, for $1,966,600.87, allowed for $1,131,075.86."

XI

Thereafter, on November 22, 1923, plaintiff received from the Commissioner of Internal Revenue certificate of overassessment in respect of the year 1916, bearing number 118905 and in the amount of $105,571.95. Such certificate of overassessment is in words and figures as follows:

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
INCOME TAX UNIT,
Washington.

IT:NR:G-LWM-4.
Certificate of overassessment.
Number: 118905.
Allowed: $105,571.95.
Rejected: $
MAGNOLIA PETROLEUM COMPANY,
Dallas, Texas.

SIRS: An audit of your income tax returns for 1916, Form 1031, and examination of related claim (if any), indicates that the amount of tax assessed to you for this year was in excess of the amount due:

Original assessment (April, 1917; page 29, line 10)	$206,079.66
Additional assessment (June, 1917; page 6, line 20)	9,772.86
Total assessment	215,852.72
Tax liability	110,280.77
Overassessment	105,571.95

The adjustments resulting in the above overassessment are fully outlined in schedules attached to a separate communication to you.

37 This overassessment is allowed in connection with the examination of a claim for refund filed by you within the required time as prescribed by section 3228 of the Revised Statutes as amended by section 1316 of the revenue act of 1921.

The amount of the overassessment will be applied as follows:

1. If the tax has not been paid, the amount will be abated by the collector of internal revenue for your district.

2. If the tax has been paid, the amount of the overpayment will either be credited against the tax due (if any) on income returns of years other than that on which the overpayment was made; or

3. The balance (if any) of the overpayment is refunded to you by a check of the Treasury Department, forwarded herewith.

Interest status will be determined as soon as necessary data can be assembled.

Respectfully,

J. G. BRIGHT,
Deputy Commissioner.
By S. ALEXANDER,
Head of Division.

Schedule number: 7264.
District: 2d Texas.
Amount abated: $
Amount credited: $
Year:
Account number: 6/176/20 4/17/29/10.
Amount refunded: $105,571.95.
Instructions executed, Oct. 30, 1923.

GEO. C. HOPKINS,
Collector Int. Rev.

The above certificate of overassessment was accompanied by Treasury warrant payable to the order of plaintiff by which $105,571.95 on account of income taxes for the year 1916 were refunded to plaintiff.

XII

On November 22, 1923, claimant received from the Commissioner of Internal Revenue certificate of overassessment in respect of the year 1917, bearing No. 16366, and in the amount of $1,131,075.86. Such certificate of overassessment is in words and figures as follows:

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
INCOME TAX UNIT,
TREASURY DEPARTMENT,
Washington.

IT:NR:G-LWM-4.
Certificate of overassessment.
Number: 16366.
Allowed: $1,131,075.86.
Rejected: $

MAGNOLIA PETROLEUM COMPANY,
Dallas, Texas.

SIRS: An audit of your income-tax return for 1917, Forms 1031 and 1103, and examination of related claims (if any), indicates
38 that the amount of tax assessed to you for this year was in excess of the amount due:

Original assessment (May, 1917, page 625, line 2)	$1,966,600.87
Tax liability	835,525.01
Overassessment	1,131,075.86

The adjustments resulting in the above overassessment are fully explained in schedules attached to a separate communication to you.

This overassessment is allowed in connection with the examination of a claim for refund filed by you within the required time as prescribed by section 3228 of the Revised Statutes as amended by section 1316 of the revenue act of 1921.

The amount of the overassessment will be applied as follows:

1. If the tax has not been paid, the amount will be abated by the collector of internal revenue for your district.

2. If the tax has been paid, the amount of the overpayment will either be credited against the tax due (if any) on income returns of years other than that on which the overpayment was made; or

3. The balance (if any) of the overpayment is refunded to you by check of the Treasury Department forwarded herewith.

Interest status will be determined as soon as necessary data can be assembled.

Respectfully,

J. G. BRIGHT,
Deputy Commissioner.
By S. ALEXANDER,
Head of Division.

Schedule number: 7264.
District: 2d Texas.
Amount abated: $
Amount credited: $
Year:
Account number: 5/18/625/2.
Amount refunded: $1,131,075.86.
Instructions executed, Oct. 30, 1923.

GEO. C. HOPKINS,
Collector Int. Rev.

The above certificate of overassessment was accompanied by Treasury warrant payable to the order of plaintiff by which $1,131,075.86 on account of income and excess profits taxes for the year 1917 were refunded to plaintiff.

XIII

The two aforesaid certificates of overassessment for the years 1916 and 1917 were accompanied by Treasury warrant payable to the order of the plaintiff in the sum of $1,236,647.81, which represented refundment of income taxes for the year 1916 in the amount of $105,571.95 and of income and excess profits taxes for the year 1917 in the amount of $1,131,075.86.

Thereafter, to wit, under date of January 18, 1924, the Commissioner of Internal Revenue wrote to plaintiff's counsel in respect of interest on the aforesaid refundments as follows:

39 "Reference is made to your personal request for the allowance of interest on amounts refunded to the above-named taxpayer for the years 1916 and 1917.

"Bureau records show that certificate of overassessment No 118905 was issued in the amount of $105,571.95 for 1916 and certificate of overassessment No. 16366 was issued in the amount of $1,131,075.86 for 1917 and both of such amounts were listed and allowed as refunds on Schedule IT: A 7264.

"Section 1324 (a) of the revenue act of 1921 authorizes the payment of interest on amounts refunded only upon the allowance of refund or credit claims. It is, therefore, held that if a refund is made subsequent to the filing of a refund claim that part of the overassessment which is based upon the ground or basis of the claim constitutes an allowance of the claim in that amount (upon which interest is payable), but that interest is not allowable upon any amount allowed other than on the basis of the claim, the latter amount being allowed under the general authority of section 252 of the revenue act, without reference to a claim having been filed.

"Examination discloses that allowance of claims were made as follows:

1916 TAXABLE YEAR

Amount of overassessment allowed upon the basis of the second amended return and claim dated June 6, 1918 (filed June 18, 1918), for the refund of $30,217.11	$22,360.22
Amount of overassessment allowed upon the basis of the third amended return and claim dated July 12, 1920 (filed September 20, 1920), for the refund of $114,565.44	82,853.32
Amount of overassessment allowed upon the basis of points not raised in claims	358.41
Total overassessment for 1916	105,571.95

1917 TAXABLE YEAR

No part of the overassessment was allowed on the basis of claim dated June 9, 1920, for the refund of $1,900,000.87.	
Amount of overassessment allowed upon the basis of third amended return for claim dated July 12, 1920 (filed October 26, 1920), for the refund of $1,605,519.42	105,556.84
Amount of overassessment attributable to points not raised in claims	1,025,519.52
Total overassessment for 1917	1,131,075.86

It therefore appears that interest is allowable as follows:

On $22,360.22 from December 18, 1918 (six months after the claim was filed), to October 11, 1923 (the date of allowance of the claim)	96,457.20
On $82,853.32 from March 20, 1921 (six months after the claim was filed), to October 11, 1923	12,714.01
Total interest due on refund for 1916	19,171.21
On $105,556.84 from April 26, 1921 (six months after the claim was filed), to October 11, 1923 (the date of allowance)	15,565.94
Total interest due on refunds for 1916 and 1917	34,737.15

"If you take exception to the ruling made herein, or a review is desired, you may, within thirty days from the date of this letter, file an appeal, with a brief or memorandum in support thereof."

XV

Under date of February 9, 1924, the Commissioner of Internal Revenue addressed a communication to plaintiff through its counsel as follows:

"Reference is made to bureau letter dated January 18, 1924, upon the subject of interest payable under section 1324(a) of the revenue act of 1921 to the above-named taxpayer on refunds of overpayments of taxes for the years 1916 and 1917.

"In connection with your subsequent verbal statement to the effect that a larger amount of interest is payable than indicated in said letter, for the reason that in your opinion the taxes were paid under protest, you are informed that the returns filed for the year 1916 do not indicate that a protest of any character was submitted in connection with the payment for that year. The receipts heretofore filed with the bureau by the taxpayer for payments of $206,079.86 and $9,772.86 showing the 'paid' stamp of the collector dated June 14, 1917, and August 7, 1917, respectively, do not bear any notation to the effect that these payments were made under protest.

"With respect to the year 1917, the receipt heretofore filed with the bureau by the taxpayer for the payment of $1,966,600.87 showing the 'paid' stamp of the collector dated June 29, 1918, contains a rubber-stamp impression 'paid under protest.' The files of the bureau contain a document marked 'copy,' a copy of which is transmitted herewith. In this document it is stated that protest is made against the payment of taxes in the amount of $1,966,600.87. This protest was apparently filed with the first amended return for 1917, inasmuch as an office record copy of that return shows a tax liability in said amount. The essential part of the protest is as follows:

"'The grounds among others of such protest and involuntary payment are that said acts are unconstitutional and void, and their terms ambiguous and uncertain; that the Magnolia Petroleum Company is not a corporation, joint-stock company, or association, or insurance company within the meaning and intendment of said acts; the regulations which have been attempted to be prescribed under said acts are not authorized thereby and that the method of applying the rates of taxation as is attempted in article 16 and in other articles of said regulations under the war excess profits tax law is arbitrary and unjust, and without the sanction of said act.'"

It will be noted that this protest is general in terms and does not contain a specific or detailed basis. Inasmuch as this document is not specific and does not set forth in detail the basis of and reasons for such protest, thus advising the Government specifically of the taxpayer's basis for alleging that the tax had been improperly assessed and collected, and further does not specify the basis upon

which the refund for the year involved was made, it is held that such protest is insufficient under the terms and provisions of section 1324(a) of the revenue act of 1921, to require the payment of interest from the date of payment of the tax upon any part of the amount refunded for 1917.

41 XVI

Under date of July 2, 1924, the Commissioner of Internal Revenue addressed a communication to plaintiff through its counsel as follows:

"Reference is made to your letter dated February 23, 1924, transmitting an appeal to the commissioner from the conclusions reached by this office in connection with proposed allowances of interest on refunds of taxes overpaid for the years 1916 and 1917 by the above-named taxpayer.

"Upon consideration of the appeal, it is held that interest is payable in the amounts indicated in the letter from this office dated January 18, 1924, except that in view of the fact that the claim for the refund of taxes paid for 1917 was apparently filed September 20, 1920 (instead of October 26, 1920, as indicated in said letter), interest is payable on $105,556.34 from March 20, 1920, six months after such date.

"The interest found due, therefore, amounts to $19,171.21 on the refund of 1916 taxes, and $16,197.84 on the refund of 1917 taxes.

"In connection with the claim that interst should be paid upon the amounts refunded from the respective dates of payment of the taxes, you are informed that bureau files contain no copy of a specific protest with regard to the payment of the 1916 taxes, and it is held that the protest under which it is contended that the 1917 taxes were paid is not a specific protest setting forth in detail the basis of and reason for such protest. The language used in the protest in question is general, and the taxpayer merely contends that the regulations and the method of applying the rates of tax are arbitrary and unjust, but no attempt was made to specify in what manner the regulations or the method of imposing the tax was improper. Such a general statement is not a sufficient protest within the meaning of section 1324-a of the revenue act of 1921.

"With respect to the contention that the claims filed, especially those attached to the third amended returns, covered the grounds upon which the refunds were made you are informed that a claim must set forth specifically the grounds upon which the refund is sought, and a claim covering certain items can not be subsequently amended to include others. After a careful review, it is held that the analysis of the allowance of claims included in bureau letter dated January 18, 1924, is correct, and that interest has been properly computed with respect to such part of the refunds attributable to the points raised by the taxpayer in the claims filed. The fact that the certificates of overassessment recited that the refunds were based upon the taxpayer's claim is not controlling for interest purposes. Accordingly, the taxpayer's appeal was denied with respect to all

points except the date upon which the claim for the refund of 1917 taxes was filed, as indicated above.

"The interest found due will be scheduled for allowance and payment."

XVII

On the 21st day of July, 1924, plaintiff received Treasury warrant payable to its order bearing date July 18, 1924, in the amount of $35,369.05. There accompanied said Treasury warrant notice
42 of interest allowance for the years 1916 and 1917. The notice of interest allowance for the year 1916 was in words and figures as follows:

TREASURY DEPARTMENT,
INTERNAL REVENUE BUREAU,
Washington, D. C.

Received July 21, 1924. H. M. M.
Form No. 7782.
Form approved by Comptroller General U. S. March 21, 1922.

NOTICE OF INTEREST ALLOWANCE

49734.

Claim No. 118905: District 2-Texas: Date of (schedule) allowance October 11, 1923. Schedule I. T. A-7264 item IT:Ad:R:CC: ECW.

MAGNOLIA PETROLEUM CO.,
Dallas Texas.

SIRS: Reference is made to your claim filed in connection with an overpayment of corporation income tax erroneously or illegally collected for the year 1916, which has been allowed by the refund of $105,371.95 credit of $

Under sec. 1324(a) of the revenue act of 1921, interest in the amount of $19,171.21 is payable on $22,360.22 from December 18, 1918, and on $85,853.32 from March 20, 1921 (six months after the date of filing claim), to October 11, 1923 (the date of allowance of the claim). No interest is allowable on the balance because that portion of the refund was not allowed on the basis of claims.

A check by the disbursing clerk of the department for the amount of such interest is inclosed herewith.

Respectfully,

J. G. BRIGHT,
Deputy Commissioner.

The notice of interest allowance for the year 1917 was in words and figures as follows:

TREASURY DEPARTMENT,
INTERNAL REVENUE BUREAU,
Washington.

Received July 21, 1924. H. M. M.
Form No. 7782.
Approved by Comptroller General U. S. March 21, 1922.

NOTICE OF INTEREST ALLOWANCE

Claim No. 128432: District 2-Texas: Date of (schedule) allowance October 11, 1923. Schedule I. T. A.-7264; item IT:AD:R:CC: ECW.
Received July 21, 1924. G. L. J.

MAGNOLIA PETROLEUM CO.,
Dallas Texas.

SIRS: Reference is made to your claim filed in connection with an overpayment of corporation income tax erroneously or illegally collected for the year 1917, which has been allowed by the refund of $1,131,075.86 credit of $
43 Under sec. 1324(a) of the revenue act of 1921, interest in the amount of $16,197.84 is payable on $105,556.34 from March 20, 1921 (six months after date claim was filed), to October 11, 1923 (the date of allowance of the claim). No interest is allowable on the balance as that portion of the refund was not allowed on the basis of the claim.

A check by the disbursing clerk of the department for the amount of such interest in inclosed herewith.

Respectfully,

J. G. BRIGHT,
Deputy Commissioner.

XVIII

Plaintiff made an indorsement on the back of the aforesaid Treasury warrant in the amount of $35,369.05 as follows:

"Indorsement of this warrant for interest on account of refund of internal revenue taxes erroneously collected in the years 1916 and 1917 and the acceptance of the proceeds thereof are solely upon the condition that by doing so the Magnolia Petroleum Company in nowise waives, modifies, or restricts its rights to further claim in the Treasury Department and/or to institute suit in the courts for the recovery of the balance of interest which said company claims it is entitled to under the law, as set forth in printed brief heretofore filed in the office of Commissioner of Internal Revenue on the 23d of February, 1924."

The above-mentioned warrant was paid by the United States bearing the above indorsement thereon.

XIX

"Regulations No. 33 (revised) governing the collection of the income tax imposed by the act of September 8, 1916, as amended by act of October 3, 1917," promulgated January 2, 1918, were vague and ambiguous, especially in reference to depletion, inventories, and depreciation so that it was impossible for plaintiff when it filed its first amended return on May 27, 1918, to correctly calculate the amount

of depletion and depreciation deductions to which plaintiff was entitled under the law and it was likewise impossible for plaintiff, because of the aforesaid conditions of said regulations, to correctly calculate its opening and closing inventories and the conditions aforesaid continued up to and subsequent to the date of payment of said tax for said year.

XX

It had been for many years the consistent practice of the Bureau of Internal Revenue, where claims were filed within the statutory period, for taxpayers to amend their claims by asserting new grounds for refund and such amendments were accepted regardless of whether the statutory period within which claim might have been filed had expired or not. However, the amount claimed could not, under such practice, be increased by amendment. This unbroken practice of the bureau continued until partially modified by the action of the Commissioner of Internal Revenue by his letter to plaintiff, dated
44 January 18, 1924, and also partially modified by Law Opinion 1116, issued May 26, 1924, Internal Revenue Cumulative Bulletin III–1, page 350.

XXI

The Commissioner of Internal Revenue declined and refused and still declines and refuses to pay to plaintiff interest upon the refund of $1,236,647.81 made on November 22, 1923, in excess of the interest which he paid plaintiff thereon on July 18, 1924, in the amount of $35,369.05.

XXII

No action upon this claim, other than that hereinbefore set forth, has been taken before the Congress or any of the departments of the Government.

Conclusion of law

Upon the foregoing special findings of fact, which are included in the judgment herein, the court decides, as a conclusion of law, that the plaintiff is entitled to recover interest at the rate of 6 per cent per annum to October 11, 1923, on $95,799.09 from June 14, 1917, on $9,272.86 from August 7, 1917, and on $1,131,075.86 from June 15, 1918, less $35,369.05 paid to the plaintiff July 18, 1924, which leaves the amount of recovery $365,799.42.

It is therefore adjudged and ordered that the plaintiff have and recover of and from the United States the sum of three hundred sixty-five thousand, seven hundred ninety-nine dollars and forty-two cents ($365,799.42).

Opinion

Moss, Judge, delivered the opinion of the court:

On June 17, 1918, plaintiff, the Magnolia Petroleum Co., filed a claim for a refund of income taxes paid for the year 1916 in the sum of $30,217.11. On September 20, 1920, it filed a supplemental claim for the refund of taxes for the same year in the sum of $114,565.44 "or such greater amount as may be refundable." On June 12, 1920, plaintiff filed claim for the refund of $1,966,600.87 paid on account of its income tax for the year 1917, and on September 20, 1920, it filed a supplemental refund claim on account of the same year for the sum of $1,005,519.42, "or such greater amount as may be legally refundable." On October 8, 1923, plaintiff's claim for the refund of $114,565.44 for the year 1916 was allowed for $105,571.95 and was rejected for the sum of $8,993.49; the claim for the refund of $30,217.11 for the same year was rejected in full; the claim for the refund of $1,966,600.87 on account of the 1917 taxes was allowed for $1,131,075.86, and was rejected for $835,525.01; and the claim for $1,005,519.42 for the same year was rejected in full. On November 19, 1923, plaintiff received certificates of overassessment in respect of the year 1916 in the amount of $105,571.95, and for the year 1917 in the sum of $1,131,075.86, and these certificates were accompanied by Treasury warrants for the total amount, $1,236,647.81. The letter of the Commissioner of Internal Revenue transmitting the payments contained the statement "interest status will be determined as soon as necessary data can be assembled."

43 After certain negotiations between plaintiff and representatives of the Internal Revenue Bureau on the question of interest plaintiff was allowed, and there was paid to it, the sum of $19,171.21 on the refund for 1916 and $16,197.84 on the refund of 1917, a total of $35,369.05 on the refund of $1,236,647.81.

Plaintiff contends that it was entitled to receive the sum of $365,964.54 as interest on the allowance of refund. This suit is for the recovery of that amount.

The right of taxpayers to receive interest on amounts refunded as illegal or erroneous collections was first recognized and provided for by section 1324(a) of the revenue act of 1921, approved November 23, 1921 (42 Stat. 227), which reads as follows:

"That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund or credit at the rate of one-half of 1 per centum per month to the date of such allowance, as follows: (1) If such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest from the time when such tax was paid, or (2) if such amount was not paid under protest but pursuant to an additional assessment from the time such additional tax was paid, or (3) if no protest was made and the tax was not paid pursuant to an additional assessment from six months after the date of filing such claim for refund or credit.

The term 'additional assessment' as used in this section means a further assessment for a tax of the same character previously paid in part."

By the same act section 177 of the Judicial Code was amended to read as follows:

"No interest shall be allowed on any claim up to the time of the rendition of judgment by the Court of Claims unless upon a contract expressly stipulating for the payment of interest, except that interest may be allowed in any judgment of any court rendered after the passage of the revenue act of 1921 against the United States for any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or any sum which was excessive or in any manner wrongfully collected under the internal revenue laws."

The above act was followed by the revenue act of 1924, approved June 2, 1924, 43 Stat. 253, section 1019 of which contains the following provision:

"Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount. The term 'additional assessment' as used in this section means a further assessment for a tax of the same character previously paid in part." (43 Stat. 346.)

46 By the act of 1924, section 177 of the Judicial Code as amended was reenacted without change.

By the terms of section 1116 of the revenue act of 1926, 44 Stat. 119, the essential provisions of the act of 1924 were reenacted.

It is the contention of the Government that the applicable statutes for the determination of this case are sections 250(b), 252, and 1324(a) of the act of 1921.

Section 250(b) of that act, 42 Stat. 264, reads as follows:

"As soon as practicable after the return is filed the commissioner shall examine it. If it then appears that the correct amount of the tax is greater or less than that shown in the return, the installments shall be recomputed. If the amount already paid exceeds that which should have been paid on the basis of installments as recomputed, the excess so paid shall be credited against the subsequent installments; and if the amount already exceeds the correct amount of the tax, the excess shall be credited or refunded to the taxpayer in accordance with the provisions of section 252."

Section 252, 42 Stat. 268, provides—

"That if upon the examination of any return * * * it appears that an amount of income, war-profits, or excess-profits tax has been paid in excess of that properly due, then, notwithstanding the provisions of section 3228 of the Revised Statutes, the amount of the excess shall be credited against any income, war profits, or excess-profits tax, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer * * *."

These two sections have no connection whatever with a claim for refund, but are intended to relate to mistake in overpayment by the taxpayer appearing on the face of the return itself, discoverable by the examination provided for in section 250(b), directing the proper credit of such excess payment to taxes due by the taxpayer under any other return, "and any balance of such excess shall be *immediately* refunded to the taxpayer." They are based upon the correct theory that in the event of an overpayment of taxes by mistake, immediately discovered and corrected, the taxpayer should not be entitled to interest. But that is not the case here. In 1918 plaintiff filed claims for refund. These claims were pending and under investigation for five years or more when the commissioner made an allowance of refund amounting in the aggregate to $1,236,647.81, but denied interest on certain items included in the total amount refunded on the ground as stated in a letter to plaintiff, that "interest is not allowable upon any amount allowed, other than on the basis of the claim, the latter amount being allowed under the general authority of section 252 of the revenue act without reference to a claim having been filed."

In the enactment of the various statutes on the subject it must have been the general purpose of Congress to save the taxpayer from whom taxes have been illegally or erroneously collected from all loss by paying interest on the amount refunded during the whole time the money was illegally retained by the Government. No interest is provided under section 252, for the simple reason that the excess payment is immediately refunded, and there is consequently no loss to the taxpayer.

47 Such a situation is in no sense analogous to the case of a taxpayer whose excess payment was retained by the Government for more than five years and was finally discovered in an investigation resulting from the filing of a formal claim for refund.

It is, however, the opinion of the court that the allowance of interest in this case is controlled by the revenue act of 1924. Under this view of the case it will not be necessary to determine the question as to the sufficiency of the protest filed with the payment of the 1917 taxes.

Except in certain particulars not important to the question involved the act of 1924 became effective upon its enactment, the necessary effect of which was to repeal section 1324(a) of the act of 1921. Section 1019 of the act of 1924 eliminated the hard provisions of the earlier act. Under its terms the allowance of interest was not

made to depend on the filing and the allowance of a formal claim, nor does it require that the tax shall be paid under protest. It provided, without restriction or condition, for the allowance of interest on amounts refunded at the rate of 6 per cent per annum to the date of the allowance of the refund. It was not amendatory, in a strict sense, of the act of 1921. It was a substitution of the latter statute for the former, and it was effective on and after June 2, 1924. The final determination and allowance and also the payment of interest occurred after the act of 1924 became effective, at which time the sole existing provision of law for the payment of interest on refunds was that contained in section 1019 of the act of 1924.

It is therefore the opinion of the court that plaintiff is entitled to interest at the rate of 6 per cent per annum on the whole amount of the refund as calculated in the findings herein, amounting to the sum of $365,799.42, and it is so ordered.

Graham, judge; Hay, judge; Booth, judge; and Campbell, chief justice, concur.

48 VI. *Judgment. February 14, 1927*

At a Court of Claims held in the city of Washington on the fourteenth day of February, A. D., 1927, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the plaintiff, and do adjudge and order that the plaintiff, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of three hundred sixty-five thousand seven hundred ninety-nine dollars and forty-two cents ($365,799.42.)

VII. *Proceedings after judgment*

On February 25, 1927, the defendant filed a motion for a new trial.

On March 7, 1927, the court entered the following order on said motion:

ORDER

It is ordered by the court this 7th day of March, 1927, that the defendant's motion for new trial be and the same is overruled.

49 [Clerk's certificate to foregoing transcript omitted in printing.]

(Indorsed on cover:) File No. 32735. Court of Claims. Term No. 283. The United States, petitioner, vs. Magnolia Petroleum Company, E. R. Brown, R. Waverly Smith, et al., etc. Petition for writ of certiorari and exhibit thereto. Filed June 6th, 1927. File No. 32735.

Supreme Court of the United States

Order allowing certiorari

Filed October 17, 1927

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

○